

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSE GONZALEZ-GONZALES,

Petitioner / Defendant

v.

Civil No. 98-1475 MV/WWD
Crim. No. 94-262 MV

UNITED STATES OF AMERICA,

Respondent / Plaintiff.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court *sua sponte*. The above-captioned case, which is a Motion to Vacate, Set Aside or Correct Sentence, pursuant to 28 U.S.C. § 2255, is set for an evidentiary hearing on October 10, 2000. The amended petition, which was filed by Petitioner *pro se*, alleged twelve grounds for error, each of which was responded to by the Government. After the Government responded, Petitioner retained the services of private counsel, Roger Hanson, Esq., and the Court granted at least four extensions of time in which to file a reply. As noted in this Court's Order of April 14, 2000, however, the reply addressed none of the twelve grounds raised in the petition except for the third ground, and added a second claim which was not characterized in constitutional terms, but which could be liberally and loosely construed as a due process or "insufficiency of the evidence" claim. Petitioner was therefore directed to "clearly enumerate and identify which of the issues raised in his petition and reply he intends to pursue" and to do so by May 15, 2000. Court's Order of Apr.14, 2000, at 2 (docket #29).

Upon inquiry by telephone at least once to Petitioner's counsel, my law clerk has been told that the clarification of issues would be forthcoming. However, nothing has been filed. I can only make the same assumption that was made in the April 14th Order, which is that except for the third ground in the petition, all these other issues have been waived based on their omission from the reply and the fact that no other issues have since been identified, despite Petitioner having had more than ample opportunity to do so. I will recommend this finding of waiver in my proposed findings and recommendation which will be issued subsequent to the hearing.

Therefore, the issues to be addressed at the evidentiary hearing will be limited to the two issues raised in the reply filed on December 10, 1999 [docket #24]: (1) that Petitioner was deprived of a favorable plea agreement and (2) that Petitioner was falsely identified as passenger in the car which was determined to be a "scout" vehicle for a tractor-trailer found to be carrying a load of marijuana by U.S. border patrol agents at a checkpoint in Las Cruces, New Mexico on March 26, 1994.

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE